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6 IN THE SUPREME COURT OF THE STATE OF ARIZONA

7 In the Matter of:

8 Supreme Court No. R-06-0016

9 PETITION TO AMEND RULE 1.6
10 OF THE ARIZONA RULES OF
11 CRIMINAL PROCEDURE

12 COMMENT OF THE PIMA
13 COUNTY PUBLIC DEFENDER IN
14 OPPOSITION OF THE PETITION
15 TO AMEND RULE 1.6

16 The Pima County Public Defender files the following comment pursuant to
17 Rule 28, Arizona Rules of the Supreme Court, in support of Petition R-06-0016,
18 concerning the proposed amendment of Rule 1.6, Arizona Rules of Criminal
19 Procedure.

20 The Public Defender of Pima County is opposed to that provision of the
21 proposed Rule that permits videoconferencing of initial appearances without the
22 defendant's consent. The first appearance of an accused in front of the Judge is a
23 significant one for both the accused and the fair administration of justice. The
24 Magistrate conducting the hearing is required to make a nuanced decision about
25 the kind of release conditions that should appropriately be applied. This judgment
26 frequently determines whether a defendant is required to defend his case from the
27 county jail or is given an opportunity to be able to be free during the pendency of
28 his criminal case. Whether a defendant is at liberty or not has a significant impact
on the outcome of the defendant's case. The Majority's proposal would permit
this important hearing to be held by videoconference, keeping the defendant in a
place apart from the Judge, law enforcement officer, prosecutor and victims. The

1 assessment made by the Judge, and in part based on the recommendations of these
2 other observers, may be based on the way the defendant appears on the video
3 screen. Further, a videoconferencing process separates friends, family and
4 supporters from the defendant. The defendant is unable to see what supporters are
5 present for him and the supporters are unable to see the defendant other than by
6 video screen.

7 An initial appearance is not, as suggested by the Majority Report, a simple
8 housekeeping matter. It is a significant hearing that impacts the liberty interests of
9 every person who is criminally accused. As has been urged in the Minority
10 Report, an obligatory videoconferenced initial appearance is a violation of the
11 defendant's right to be present under Article II, Section 24, of the Arizona
12 Constitution. A videoconferenced initial appearance undermines the respect and
13 dignity of the Arizona Criminal Justice System, dehumanizes and tends to
14 marginalize the value of every accused citizen processed in this way.

15 The Pima County Public Defender Office has been involved in representing
16 defendants at initial appearances for approximately three years. Our office has
17 undertaken to provide representation in these hearings in order to help secure a
18 greater number of pretrial releases with consequent savings to Pima County.
19 While these numbers are difficult to calculate, our estimate has shown a 4%
20 increase in the number of releases since we have been involved in this process. It
21 has further been our experience that we have a greater number of releases when
22 the defendant is able to have an in-person hearing before a Magistrate rather than
23 one by videoconferencing. In-person hearings present a defendant in a real and
24 human way. In-person hearings provide a greater opportunity for defendants to
25 speak out, present evidence and argue their release as opposed to otherwise
26 mechanized appearances through videoconferencing.

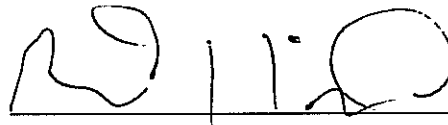
27 The Pima County Public Defender Office's experience in initial
28 appearances gives us a peculiar insight into the mechanics of initial appearances

1 and videoconferencing. Understanding that informed release decisions best serve
2 the community by taking the financial burden off the county jails, in-person
3 hearings will ultimately provide a greater savings to the community than
4 obligatory videoconferencing.

5 Based on our experience, the Pima County Public Defender strongly urges
6 that the Majority's position vis-à-vis videoconferencing initial appearances be
7 rejected.

8 Respectfully submitted this 16th day of July, 2009.

9 PIMA COUNTY PUBLIC DEFENDER

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12 Robert J. Hirsh

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17 Original and six (6) copies mailed this
18 16th day of July, 2009 to:

19 Clerk of the Arizona Supreme Court
20 1501 W. Washington, Suite 402
21 Phoenix, AZ 85007

22 Copy delivered this
23 14th day of July, 2009 to:

24 Pima County Attorney
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